

EXHIBIT 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

9:18 Civ. No. 1467 (GLS) (ATB)

MATTHEW RAYMOND,

Plaintiff,

VIDEOCONFERENCE
DEPOSITION OF:
JOHN VALVO, M.D.

vs.

TROY MITCHELL, Lieutenant at Auburn
Correctional Facility, CHARLES
THOMAS, Correction Officer at Auburn
Correctional Facility, THOMAS HARTE,
Sergeant at Auburn Correctional
Facility, THOMAS PHILLIPS, Correction
Officer at Auburn Correctional
Facility, THOMAS GIANCOLA, Correction
Officer at Auburn Correctional Facility,
HAROLD D. GRAHAM, Former Superintendent
of Auburn Correctional Facility, BRIAN
BAUERSFELD, Correctional Hearing
Officer of Auburn Correctional Facility,
BRIAN O'HORA, Correctional Officer at
Auburn Correctional Facility, AIMEE
HOPPINS, R.N., DR. DEBORAH GEER, and
"JOHN DOE," Correction Officer at Auburn
Correctional Facility,

Defendants.

TRANSCRIPT of the testimony of JOHN VALVO,
M.D. in the above-entitled matter, as taken by and
before CELESTE A. GALBO, a Certified Court Reporter
and Notary Public of the State of New Jersey, held
via Zoom remote videoconferencing software, on March
11, 2022, commencing at 9:01 a.m.

HUDSON COURT REPORTING & VIDEO (212) 273-9911

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8 E X H I B I T S

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EXHIBIT NO. DESCRIPTION PAGE

10

Exhibit 1 report of Dr. John Valvo dated
11 October 18, 2021 6

12 Exhibit 2 report of Sherry A. Leitch, M.D.
dated July 23, 2021 23

13

Exhibit 3 documents, Bates stamped 001540
14 to 001544 58

15 Exhibit 4 report of Jonathan M. Vapnek, M.D.
dated December 15, 2021 65

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(Exhibits received electronically by
18 the reporter after the close of the deposition were
marked and are attached to the transcript.)

19

20

21 REQUEST FOR DOCUMENTS:

22 PAGE LINE

23 17 4

18 1

24

25

1 THE COURT REPORTER: Good morning, I'm
2 Celeste Galbo, a Certified Court Reporter.

3 The attorneys participating in this
4 deposition acknowledge that I am not physically
5 present in the deposition room and that I will be
6 reporting this deposition remotely. They further
7 acknowledge that, in lieu of an oath administered in
8 person, the witness will verbally declare his
9 testimony in this matter under the penalty of
10 perjury. The parties and their counsel consent to
11 this arrangement and waive any objections to this
12 manner of reporting.

13 Please indicate your agreement by
14 stating your name and your agreement on the record,
15 starting with plaintiff's counsel.

16 MS. ROSENFELD: Katie Rosenfeld; I
17 agree.

18 MR. MACKEY: Patrick Mackey on behalf
19 of defendants Mitchell, Thomas, Harte, Phillips,
20 Giancola, Graham and Geer and I agree.

21 JOHN VALVO, M.D., stating a business address of 2420
22 Ridgeway Avenue, Rochester, New York 14626, having
23 been duly sworn by the Notary Public, was examined
24 and testified as follows:

25

1 EXAMINATION

2 BY MS. ROSENFELD:

3 Q. Good morning, Dr. Valvo. How are you?

4 A. Good morning, I'm fine. Yourself?

5 Q. Good, thanks. My name is Katie
6 Rosenfeld. I am one of the lawyers for the plaintiff
7 in this case, Matthew Raymond. As you know, we're
8 here to conduct your deposition today.

9 Have you ever been deposed before, Dr.
10 Valvo?

11 A. Yes.

12 Q. Great. Approximately how many times?

13 A. Perhaps a half dozen times.

14 Q. So you're generally familiar with how
15 these things work, but I'll just give you a quick
16 update in case it's been a while.

17 So, I'm going to ask you a series of
18 questions and you'll do your best to respond to them.
19 You understand that all your answers are under oath
20 today, correct?

21 A. Yes.

22 Q. If you would like to take a break at
23 any time, that's fine, just I would ask that you
24 answer any pending questions before we take a break.
25 Is that acceptable to you?

1 A. Yes.

2 Q. And we should do our best to give each
3 other verbal answers, not head shakes for nods or yes
4 and noes, um-hum because the court reporter is making
5 a transcript. Do you understand that?

6 A. Yes.

7 Q. Thank you.

8 Dr. Valvo what if any documents did you
9 review to prepare for your deposition today?

10 A. Well, I'll go through them one by one
11 if you wish.

12 Q. Sure. Well, I have your report in
13 front of me which we can mark as Exhibit 1 for your
14 deposition. Do you have your report in front of you?

15 A. Yes, I do.

16 Q. Okay.

17 A. I do not have it in front of me, no, I
18 do not. I have the records in front of me but I do
19 not have my report per se but I can get that.

20 Q. Okay. Yeah, if you can pull that up so
21 we're both looking at it right now, that would be
22 great.

23 (Valvo Exhibit 1, report of Dr. John
24 Valvo dated October 18, 2021, was deemed
25 marked for identification.)

1 A. Yes, I have it.

2 Q. Okay. Excellent. And so on the first
3 page of your report I see that you have listed one
4 through 19, a number of documents that you reviewed
5 to prepare your October 18, 2021 report, correct?

6 A. Yes.

7 Q. Okay. Are those the documents that you
8 reviewed for your deposition today?

9 A. Yes.

10 Q. Did you review any other documents that
11 are not listed as 1 through 19 to prepare for your
12 deposition today?

13 A. I reviewed a rebuttal report by Dr.
14 Vapnek. That's the only other document that's not
15 listed as such.

16 Q. Okay.

17 MS. ROSENFELD: And just for the
18 record, Celeste, it's Vapnek, V-A-P-N-E-K.

19 Q. Okay. So you're licensed to practice
20 medicine in New York, Dr. Valvo?

21 A. Yes.

22 Q. Are you licensed to any other states?

23 A. No.

24 Q. Has your license to practice medicine
25 ever been cancelled, revoked or suspended?

1 A. No.

2 Q. Do you hold any board certifications?

3 A. I am board certified in urology.

4 Urology.

5 Q. And since when are you board certified
6 in urology?

7 A. I believe 1983. 1985, I'm sorry.

8 Q. Am I correct that you are a physician
9 in a private urology practice titled Center for
10 Urology?

11 A. Yes.

12 Q. You see patients in your practice as
13 part of the Center for Urology?

14 A. Yes.

15 Q. Do you hold any other positions,
16 employment positions other than as a physician
17 working at Center for Urology?

18 A. No.

19 Q. And how long have you been in practice
20 as a urologist at the Center for Urology?

21 A. This is year 39.

22 Q. So, it looks like you completed a
23 fellowship in -- excuse me.

24 It looks like you completed your
25 residency in urology in 1983. Did you directly go

1 from your residency into private practice as a
2 urologist?

3 A. Yes.

4 Q. Have you ever held any other employment
5 positions besides your job as a physician at the
6 Center for Urology?

7 A. No.

8 Q. And how long have you been doing work
9 as an expert in litigation?

10 A. Well, it's hard to say for sure, but
11 I've probably -- over the course of my career I've
12 been asked to provide expert opinions on several
13 cases. Several being not more than 10.

14 Q. Okay. So in the course of your entire
15 career you think you served as an expert
16 approximately ten times?

17 A. Yes.

18 Q. And have you ever served as an expert
19 for Mr. Mackey's firm before?

20 A. I have not.

21 Q. And have you served as an expert in
22 cases on behalf of defendants who were the parties
23 being sued?

24 A. Yes.

25 Q. And have you served as an expert in

1 cases on behalf of a plaintiff, the person who's
2 bringing the lawsuit?

3 A. Yes.

4 Q. And were these cases filed in federal
5 court, if you know?

6 A. I do not believe they were.

7 Q. Okay. And just to clarify, when I ask
8 you how many times you've served as an expert, I'm
9 not just asking you about times that you've written a
10 report or sat for a deposition, I'm asking any time
11 that you worked with lawyers to consult about a legal
12 matter as a urologist. Did you understand that to be
13 my question?

14 A. Yes, I did.

15 Q. And -- excuse me. So, other than your
16 work on this case in 2021, did you serve as an expert
17 in any other cases in 2021?

18 A. No.

19 Q. And what about in 2020, did you serve
20 as an expert in any cases in 2020?

21 A. No.

22 Q. What about in 2019, any cases that you
23 were an expert in 2019?

24 A. I do not recall.

25 Q. Okay. Have you ever testified in

1 court?

2 A. Yes.

3 Q. How many times have you testified in
4 court?

5 A. Probably four to five times.

6 Q. So, just to make sure I understand, you
7 believe that you've served as an expert in your
8 entire career approximately ten times and in
9 approximately half of those cases you had to testify
10 in court?

11 A. I believe that would be a fair
12 assumption, yes.

13 Q. And when was the last time that you
14 testified in court approximately?

15 A. One month ago.

16 Q. And what was the matter that you were
17 testifying in?

18 A. It was a motor vehicle accident.

19 Q. Were you an expert for the plaintiff or
20 for the defense?

21 A. I was an expert for the plaintiff.

22 Q. And what court were you in, if you
23 know?

24 A. Canandaigua New York Court.

25 Q. So it's a state court you believe?

1 A. That's correct.

2 Q. What was the nature of the person's
3 injury that you testified about?

4 A. The nature of the injury was a motor
5 vehicle accident where the plaintiff was struck by a
6 moving vehicle and suffered significant injuries
7 related to his nervous system and consequently had
8 urologic issues as well.

9 Q. Have you served as an expert in other
10 cases where there was an issue about a person
11 being -- suffering from a neurogenic bladder?

12 A. I do not believe, my recollection, no.

13 Q. And are you -- how do lawyers who want
14 to work with you as an expert find you?

15 MR. MACKEY: Objection to form.

16 Go ahead.

17 Q. If you know. Are you listed on any
18 expert services? Are you --

19 A. No.

20 Q. Okay.

21 A. We have a website with a hospital which
22 basically demonstrates my credentials and perhaps
23 word of mouth, but I do not go out and list it.

24 Q. And when you say we have a website with
25 the hospital, can you explain what you mean by that?

1 A. Well, I'm the director of robotic
2 surgery at the hospital. And so the hospital has
3 physicians in various key positions in their
4 institution which highlight certain opportunities for
5 patients. And I'm director of the robotic program at
6 Rochester General Hospital.

7 Q. So, I'm looking at the second page of
8 your resume and it says "Faculty Appointment,
9 University of Rochester School of Medicine and
10 Dentistry, Clinical Associate Professor". Is that a
11 title that you currently hold?

12 A. That has been -- no, that terminated
13 that degree. We had that with our affiliation with
14 the university. The hospitals basically interrupted
15 that and so with that the honorary degrees were
16 rescinded.

17 Q. Okay. When did that affiliation
18 through which you held that title end?

19 A. Just a few short years ago.

20 Q. Okay. Can you tell me what year?

21 A. No.

22 Q. Was it before the pandemic, before
23 2020?

24 A. Yes.

25 Q. So you're not a clinical associate

1 professor at the University of Rochester School of
2 Medicine, correct?

3 A. Not at this present time.

4 Q. Okay. And you haven't been since at
5 least 2019, correct?

6 A. That's correct.

7 Q. Okay. And when you were a clinical
8 associate professor, you said it was an honorary
9 title? I don't understand what you mean. If you
10 could clarify, please.

11 A. We had residents come to our
12 institution for training, and so in order for us to
13 provide the proper academic environment, myself and
14 my colleagues were assigned titles with the
15 university. When the residents were removed, the
16 titles went away.

17 Q. I see. So at your medical practice you
18 had residents coming to do placements in your office?
19 Is that fair to say?

20 A. No, basically hospital work; operating
21 room assisting and learning emergency room urologic
22 care.

23 Q. So when you went into a hospital, you
24 would have residents assisting you with procedures
25 and because you were supervising them, you were

1 titled a clinical associate professor; is that
2 correct?

3 A. That's pretty much what that amounted
4 to, yes.

5 Q. Okay. And in your role as executive
6 director of the center for -- say it again.

7 A. Pollisseni.

8 Q. Pollisseni, that's P-O-L-I-S-S-E-N-I.
9 Executive director for the Pollisseni Center for
10 Robotic and Minimally Invasive Surgery at Rochester
11 General Hospital, is that a title that you currently
12 hold?

13 A. Yes.

14 Q. And what is Titan Medical, please?

15 A. Titan Medical is an upstart robotic
16 company based in Canada.

17 Q. And it says that you're senior VP of
18 medical affairs for that company; is that correct?

19 A. That's correct.

20 Q. And what are your duties in connection
21 with that role?

22 A. Basically consultation work regarding
23 the development of the new robotic, surgical robotic
24 system.

25 Q. Okay. And how much of your work is

1 spent serving patients as part of your urologic
2 practice versus as senior VP of medical affairs for
3 Titan Medical?

4 A. 100 percent I see patients and a very
5 small part of my time is as a consultant. It's a
6 periodic consultation. It's not something that is on
7 a daily basis.

8 Q. I see. And is that a payable, that
9 you're paid to do that consulting?

10 A. No.

11 Q. You just do it out of professional
12 interest?

13 A. Correct. Yes.

14 Q. Okay. And have you written or
15 published any work in your field?

16 A. Yes, I have.

17 Q. Okay. I don't see it listed on your
18 CV, so could you just describe perhaps what your
19 publications are in general terms?

20 A. These were articles that covered the
21 scope of general urology written early on in my
22 practice and as a resident.

23 Q. When was the last time that you
24 published a piece like that?

25 A. I would say probably 20 years ago.

1 Q. Do you have a list of your publications
2 somewhere in your possession?

3 A. Yes, that could be provided to you.

4 (REQ) MS. ROSENFELD: Okay. I just request
5 after the deposition if we could please get a copy of
6 Dr. Valvo's publications.

7 Q. Have you ever been disciplined by any
8 medical board or authority?

9 A. No.

10 Q. And have you ever been found by a court
11 to be unqualified to testify as an expert?

12 A. No.

13 Q. Have you ever received any kind of
14 ethical sanctions from any oversight board?

15 A. No.

16 Q. Have you ever been convicted of any
17 crimes?

18 A. No.

19 Q. Have you ever been sued for medical
20 malpractice?

21 A. No.

22 Q. Are you aware of any decisions where a
23 court has examined your testimony or findings whether
24 in a positive or negative way?

25 A. No.

1 (REQ) Q. Okay. So, because we're in federal
2 court at some point your attorney will be asked to
3 provide me with a list of the cases in which you've
4 given deposition or other testimony within the last
5 four years.

6 MS. ROSENFELD: And so I'll just put on
7 the record that we need to follow up with that I
8 think on both sides, Pat.

9 Q. Okay. So let's talk about your
10 opinions about Mr. Raymond. My first question for
11 you, Dr. Valvo, is based on the records that you
12 reviewed which I see listed at 1 through 19 in your
13 report, is it your opinion that Mr. Raymond had any
14 urologic conditions before September 14, 2016?

15 A. No, I do not believe he did.

16 Q. And is it your view that Mr. Raymond
17 has neurogenic bladder today?

18 A. Yes.

19 Q. And do you have an opinion about when
20 Mr. Raymond developed neurogenic bladder?

21 A. The earliest objective evidence we have
22 was I believe sometime in late 2016. I believe that
23 was the case.

24 Q. Okay. And when you say that the
25 earliest objective evidence that you think we have is

1 sometime in late 2016, can you be any more specific
2 about what you're referring to?

3 A. He was having difficulty voiding and
4 was in consultation and found to be in urinary
5 retention and required catheterization.

6 Q. So, as you know, the incident in which
7 my client reports that he was assaulted was on
8 September 14, 2016. You're aware of that date as the
9 date of validation?

10 A. Yes.

11 Q. Okay. And just to make sure that I
12 understand your testimony, before September 14, 2016,
13 it's your opinion that Mr. Raymond did not suffer
14 from any urologic conditions, correct?

15 A. Correct.

16 Q. Sometime in late 2016, after September
17 16, 2016, is it your view that he began to exhibit
18 symptoms of neurogenic bladder?

19 A. Yes, and I believe it was either in
20 late '16 or January of '17. I don't actually recall
21 but it was sometime in that time frame.

22 Q. And it's also your view that he
23 continues to suffer from this condition today; is
24 that correct?

25 A. Yes.

1 Q. What is your opinion, if you have one,
2 about what caused Mr. Raymond to develop neurogenic
3 bladder in late 2016 or early 2017 as you described?

4 A. I do not have an opinion.

5 Q. Do you, based on your review of the
6 records in the case 1 to 19, do you have any
7 explanation for why Mr. Raymond developed neurogenic
8 bladder at that time?

9 MR. MACKEY: Object to form.

10 A. No.

11 Q. Is it your view, Dr. Valvo, that the
12 neurogenic bladder that Mr. Raymond suffers from
13 occurred spontaneously?

14 A. The earliest evidence we have was that
15 time when he went to the infirmary. I do not have an
16 understanding as to how it happened. And sometimes
17 this condition can occur without significant
18 precedent causes.

19 Q. So I'd like to just sort of be a little
20 more specific about what your view of the early signs
21 of neurogenic bladder condition are. Are you able to
22 put a date at all on what you would call the first
23 symptom of the neurogenic bladder that arose for
24 Mr. Raymond?

25 MR. MACKEY: I'll object to asked and

1 answered.

2 Go ahead, Dr. Valvo.

3 A. I can't tell you when it began. All I
4 can tell you is when it manifested itself and that's
5 the earliest time that we have any objective evidence
6 that he had a problem.

7 Q. Understood. And I know you said
8 earlier that you thought that this was sometime in
9 late 2016 or early 2017. I just would like to be a
10 little bit more precise about what date you think the
11 symptoms emerged.

12 Do you have a copy of Dr. Leitch's
13 expert report in front of you or could you pull one,
14 up, please?

15 A. I'm having a tough time trying to find
16 that.

17 Q. Okay. I understand.

18 MS. ROSENFELD: Pat, would it be
19 possible for you to email Dr. Valvo a copy of that
20 report so he can pull it up or shall I email it to
21 you if you don't have it on the top of your email?

22 MR. MACKEY: I could probably -- I
23 assume you're not planning to put it up on the screen
24 or anything like that?

25 MS. ROSENFELD: Would that be easier?

1 Maybe I'll just do that. That's a good idea. Okay.

2 BY MS. ROSENFELD:

3 Q. So, Dr. Valvo, you noted in your report
4 at item 19 that you had previously reviewed Dr.
5 Leitch's report, correct?

6 A. Yes.

7 Q. Okay. So I'm going to just show you on
8 this screen a copy of that report and ask you a few
9 questions about it.

10 MR. MACKEY: Let me do this before you
11 do that. Dr. Valvo, what's easier for you, to look
12 at it on the screen or do you want me to email --

13 THE WITNESS: I think she can point on
14 the screen at the points she wants to.

15 MR. MACKEY: I mean, if you wanted to,
16 I can email you a copy.

17 THE WITNESS: Well, let's see how well
18 I can read it.

19 MR. MACKEY: Whatever works best for
20 you. Whatever is easiest for you.

21 THE WITNESS: That's going to be more
22 expeditious, so why don't we do that.

23 MR. MACKEY: Okay.

24 THE WITNESS: Are we using the screen?

25 MS. ROSENFELD: We are. Just one

1 moment, I'm getting it set up for you.

2 MR. MACKEY: I'm stepping off screen
3 for one second.

4 MS. ROSENFELD: Sorry, I'm having a
5 little tech issue.

6 BY MS. ROSENFELD:

7 Q. Okay. Dr. Valvo, do you see on your
8 screen in front of you a document that has the title
9 Sherry A. Leitch, M.D. at the stop?

10 A. Yes.

11 Q. Great.

12 MS. ROSENFELD: And, Celeste, we can
13 mark this one as Valvo Exhibit 2.

14 (Valvo Exhibit 2, report of Sherry A.
15 Leitch, M.D. dated July 23, 2021, was deemed
16 marked for identification.)

17 Q. So, Dr. Valvo, I'm just going to scroll
18 down to -- so it says -- this is Dr. Leitch's report.
19 It says the following records were reviewed. And
20 then she gets to the portion of the report where
21 she's looking at Mr. Raymond's medical records from
22 the New York State Department of Corrections which
23 you also reviewed, I believe, at Item 2 on your
24 report; is that correct?

25 A. Yes.

1 Q. Okay. So you'll see that the first
2 entry is 12/22/2015 under her heading. And then I'm
3 just going to scroll down so we can move to these
4 sort of -- what page of the report are we at? We're
5 on page 6 of her report. And do you see that the top
6 entry is 9/26/2016?

7 A. Yes.

8 Q. So using Dr. Leitch's summary, are you
9 able to say with any greater specificity when you
10 believe the first symptoms of the neurogenic bladder
11 condition were reported by Mr. Raymond?

12 A. No, I'm not.

13 Q. Okay. What would you need to look at
14 to answer that question?

15 A. I'd need to know -- I'd need to have
16 examined the patient myself and have had more
17 specific diagnosis other than genitourinary symptoms.
18 I don't know what that means.

19 Q. So a little while ago in your
20 deposition you said that you thought that the
21 neurogenic bladder symptoms were first reported in
22 late 2016 early 2017, was what I thought you
23 testified. So what I'm asking you is what records
24 did you look at to make that conclusion?

25 A. When he went to the infirmary and was

1 found to have a distended bladder unable to urinate.

2 Q. And when you say when he went to the
3 infirmary, are you referring to an infirmary within
4 the New York State Department of Correction system or
5 at Upstate Medical Center or something else?

6 A. I believe he was seen originally in the
7 infirmary and then sent to Upstate Medical systems
8 for a catheterization.

9 Q. Okay. So your view is that the first
10 sign of this condition would have been with the
11 report of a distended bladder; is that correct?

12 A. With his inability to void, yes.

13 Q. Okay. And then he went to Upstate
14 Medical Center in early 2017. And is dysuria,
15 D-Y-S-U-R-I-A, is that a symptom of neurogenic
16 bladder?

17 A. Not in my diagnostic treat, no.

18 Q. And what about the diagnosis of urinary
19 retention after a bladder scan demonstrated over 600
20 cc's of urine in his distended bladder, would that be
21 a symptom of neurogenic bladder?

22 A. Yes.

23 Q. Okay.

24 A. And that's what I'm referring to.

25 Q. Okay. So that's a January 19, 2017,

1 encounter at Upstate University Hospital. So we
2 could put the date that -- that date as a clear
3 symptom of neurogenic bladder; is that fair to say?

4 MR. MACKEY: I'll object to form.

5 A. Yes.

6 Q. Okay. And so prior to that, as you sit
7 here today, you're not aware of whether there were
8 any symptoms reported to the -- before that date that
9 were consistent with neurogenic bladder? Am I
10 understanding your testimony correctly?

11 A. Yes.

12 Q. And but you did review the New York
13 State Department of Corrections' records, right?

14 A. Yes.

15 Q. What are other -- before the
16 presentation to Upstate Medical Center with -- where
17 he was diagnosed with urinary retention after a
18 bladder scan, in patients that you've seen, what are
19 typically other early symptoms that they report of
20 the neurogenic bladder?

21 MR. MACKEY: Are you just asking
22 generally?

23 MS. ROSENFELD: Yeah, in his experience
24 with patients.

25 A. Generally, just difficulty voiding and

1 slowness of the stream, a fullness on the bladder
2 area of incomplete evacuation, and then, again,
3 objectively finding a large amount of urine in the
4 bladder.

5 Q. Okay. Is 600 cc's a large amount of
6 urine in the bladder?

7 A. Yes.

8 Q. Okay. And is burning with urination
9 sometimes a symptom of neurogenic bladder?

10 A. No.

11 Q. What about blood in the urine?

12 A. No.

13 Q. What about testicular and groin pain?

14 A. No.

15 Q. Okay. So, Mr. Raymond after he
16 reported these signs and symptoms of urinary
17 retention and received the neurogenic bladder
18 diagnosis, how -- can you describe based on your
19 review of the records what the cause of the
20 neurogenic bladder problem was?

21 MR. MACKEY: I'll object to form.

22 A. Well, he had a catheterization, he had
23 immediate relief of his distended bladder and then he
24 was sent to Upstate for a suprapubic tube as opposed
25 to a urethra catheter which I believe he denied

1 wanting to have done. So they put a suprapubic tube
2 in which is a tube placed in the bladder in the lower
3 abdomen so that the bladder will drain. He then went
4 about having a urodynamic test and further scoping
5 which failed to reveal any evidence of obstructive
6 etiology.

7 Q. And you're aware that Mr. Raymond as
8 you note in your report underwent a bladder
9 augmentation surgery in 2020, correct?

10 A. Yes.

11 Q. And what was the condition that
12 caused -- that required him to have surgery in your
13 view?

14 A. Well, I think he was having a great
15 deal of difficulty with the suprapubic catheter and
16 wanted a continent urinary diversion, and so a
17 catheterizable pouch was fashioned surgically for him
18 to allow him to have a drainage system that he would
19 periodically need to catheterize but that would avoid
20 the unpleasantness of having to catheterize through the
21 penis.

22 Q. And are you familiar with the practice
23 at Western Urology -- Western New York Urology
24 Associates?

25 A. The practice itself?

1 Q. Yes.

2 A. Yes, I know them.

3 Q. Okay.

4 A. Yes, I know of them.

5 Q. And do you know Dr. Teresa Danforth?

6 A. I do not know her personally but I know
7 of her.

8 Q. And what's her reputation in the field,
9 if you know?

10 A. Fine, I believe. She's a urologist who
11 specializes in bladder augmentation.

12 Q. And do you know Dr. Bodkin of that
13 practice?

14 A. Yes, I do. I know of him, yes.

15 Q. And what's Dr. Bodkin's reputation in
16 the field, if you know it?

17 A. As far as I'm concerned, it's fine.

18 Q. So you said that the condition that
19 required the bladder augmentation surgery was that
20 Mr. Raymond was having difficulty with the suprapubic
21 catheter. Why did he need a suprapubic catheter at
22 that point in 2020?

23 A. Well, he was unable to empty his
24 bladder on his own and what he could have had -- he
25 could have intermittently catheterized himself but he

1 was opposed to that. The bladder was
2 defunctionalized; it couldn't empty on its own. And
3 so some form of drainage had to be affixed. A number
4 of different types of urinary diversions. He after
5 consultation with the physicians at Western New York
6 decided that that would fit into his lifestyle as
7 best as any. That's my impression.

8 Q. And do you agree with the course of
9 treatment that Western New York Urology Associates
10 pursued here out of the range of options that you
11 just mentioned were available?

12 MR. MACKEY: Objection.

13 A. Yeah, I believe that that was an
14 appropriate decision based on patient's lifestyle and
15 the physician's expertise.

16 Q. And why was Mr. Raymond unable to empty
17 his bladder on his own at the point where he ended up
18 having that surgery in 2020?

19 A. He had a neurogenic bladder as defined
20 originally in 2017.

21 Q. And when you said that it was
22 appropriate based on the patient's lifestyle and the
23 physician's, you know, expertise in that area, why do
24 some patients opt to have this kind of augmentation
25 surgery as opposed to self-catheterization in your

1 experience?

2 A. Well, he, from the very beginning the
3 records indicate to me that he was not receiving
4 intermittent catheterizations very easily. Sometimes
5 it can be a little bit uncomfortable for a patient to
6 catheterize themselves through the normal urethra
7 orifice. And so in an effort to provide some degree
8 of continence, a catheterizable pouch can be
9 developed or a continuous urinary diversion which is
10 called an ileal conduit. That's a bag that's fit on
11 the side of the abdomen to which the urine
12 continuously drains. And being a young man, he
13 elected for something a little bit more cosmetic.

14 Q. And is that something you see in other
15 younger patients, that they don't want to have an
16 external bag, so they opt for this kind of procedure?

17 A. Yes.

18 Q. And so what is the prognosis for
19 somebody who has this type of surgery at the age that
20 Mr. Raymond did? How will this disease progress?

21 A. Well, it shouldn't. As long as he
22 maintains a good healthy ability to intermittently
23 catheterize that pouch, it should act very much
24 similar to what his normal anatomy was and so there
25 is no suggestion that it would get any worse.

1 Q. So can you just explain to me as a
2 layperson what exactly the pouch is? It's not an
3 external bag that's holding urine, right? It's is it
4 inside his body? What exactly does he have?

5 A. You basically take segments of the
6 bowel and fashion a new bladder. In this case, you
7 will remove parts of the bladder and affixed a bowel
8 which will approximate the same capacity that a
9 normal bladder will. And because of the segments of
10 bowel that are used, it could be fashioned in a way
11 that it won't drain continuously but that the patient
12 would have to intermittently drain the pouch just as
13 if you were to go excuse yourself from a cocktail
14 party and void on your own. They will have a
15 catheter. They'll carry a catheter with them and
16 they'll intermittently catheterize that pouch into a
17 receptacle.

18 Q. How -- I'm sorry, go ahead?

19 A. Basically it's just using a catheter
20 and placing it through the little stoma which comes
21 out in the lower abdomen. It goes into the new
22 bladder. The bladder is drained. They take the
23 catheter, put it back in their pocket or purse and go
24 about their business.

25 Q. That's incredible. So the stoma

1 meaning he has an opening in his stomach to allow
2 access to the new constructed bladder?

3 A. That's correct.

4 Q. And so he attaches a catheter to the
5 stoma which connects into the new bladder and brings
6 the urine out that way; is that correct?

7 A. Well, he doesn't attach it. He just
8 passes the catheter in through that opening. The
9 bladder is decompressed and the catheter is simply
10 removed.

11 Q. Obviously you're not walking around
12 with an open wound on your abdomen all the time. How
13 does that sort of opening into the body stay
14 sanitary? What does that look like?

15 A. It's only about the diameter of one
16 thumb. And more often than that because it's a
17 mucous membrane exposed to the outside, patients will
18 have a small removable Perry pan cover it just to
19 keep it from irritating your clothing.

20 Q. And is this a surgery that you perform,
21 Dr. Valvo?

22 A. Yes.

23 Q. And so the best outcome is that going
24 forward Mr. Raymond will have to engage in this
25 catheterization process in order to have normal

1 urologic function; is that correct?

2 MR. MACKEY: Object to form.

3 A. That is correct.

4 Q. And how does the -- what's the
5 expectancy of how long one can -- how long such a
6 reconstructive bladder can function for somebody for?

7 A. Well, I think as long as a patient or
8 some designee of a patient can catheterize that
9 pouch, indefinitely. In cases where a patient may be
10 rendered unable to catheterize themselves, a catheter
11 can be simply inserted and left indwelling for a
12 period of time and then it can be simply changed. So
13 it's something that can be managed quite easily with
14 unskilled nursing, actually.

15 Q. So as you note in your report,
16 Mr. Raymond is 32 years old. Would you expect that
17 the augmented bladder that Dr. Danforth created in
18 2020 will last for the rest of his life potentially?

19 A. Yes.

20 Q. Okay. And does he -- does Mr. Raymond
21 face any particular risks as a result of being
22 someone who has an augmented bladder as opposed to
23 his original bladder?

24 A. Not to my knowledge, no.

25 Q. For example, is it associated with, you

1 know, a shorter life expectancy or the development of
2 any other kind of medical conditions or, you know,
3 compromises to the body?

4 A. No. I have patients in my practice on
5 20, 30 and some even 40 years without any problems.

6 Q. Is the bladder augmentation surgery
7 considered to be sort of one of the last options for
8 somebody who is experiencing urinary retention?

9 A. No, there are a number of other options
10 short of that. As I said before, intermittent
11 self-catheterization is a modality that is oftentimes
12 used, and we see patients who have -- who are
13 paraplegic from a number of different causes who
14 intermittently catheterize themselves. Some can
15 actually void on their own by pressing down on their
16 bladder. So there are more conservative measures but
17 there are some who wish to have a little bit better
18 control and therefore these surgeries have been
19 devised to ameliorate those problems.

20 Q. Is it fair to say that you as a doctor
21 like to exhaust other non-surgical options before you
22 would perform a bladder augmentation surgery?

23 MR. MACKEY: Object to form.

24 A. I think if it's appropriate and the
25 patient is willing. Sometimes however, one may need

1 to go to those extremes from the very beginning.

2 Q. I guess that's exactly what I'm asking.
3 Is the bladder augmentation surgery an extreme in
4 terms of it's a serious abdominal surgery that
5 requires, you know, inpatient hospitalization?

6 A. Well, yes, it's a serious operation.
7 Obviously it has its own pitfalls like everything we
8 do, but when taken into context, it can provide a
9 much more not only cosmetic but a very good
10 therapeutic treatment for a neurogenic bladder.

11 Q. Okay. So, in your report, Dr. Valvo,
12 I'm looking at page 2 of your report, the first
13 paragraph, it looks like approximately fourth
14 sentence and it says "Various medical conditions can
15 cause neurogenic bladder which include all or any of
16 the following: Stroke, Parkinson's disease, multiple
17 sclerosis, spinal cord injury, spinal surgery,
18 central nervous system tumors, trauma, medications
19 along with alcohol and drug abuse."

20 What kind of trauma can cause
21 neurogenic bladder in your experience?

22 A. Trauma can be delivered in a number of
23 ways, either locally to the structures in the pelvis,
24 the spinal cord or the brain.

25 Q. What's the definition of trauma that

1 you're using here medically?

2 A. I would say a significant injury from
3 an object or objects external to the body but that
4 also could mean surgical trauma as well.

5 Q. So what kind of trauma in your
6 experience have you seen where patients have
7 developed a neurogenic bladder?

8 A. Spinal cord injury, surgical trauma to
9 the structures in the pelvis from an operation
10 adjacent to the urinary tract and trauma to the brain
11 itself.

12 Q. And for those cases where you've seen
13 patients develop neurogenic bladder from trauma to
14 the brain itself, what has been the mechanism of
15 injury to the brain?

16 A. A forceful impact to the cranium
17 invariably causing a fractured pelvis -- a fractured
18 skull with significant injury to the brain matter.

19 Q. So what kind of impact to the cranium
20 have you treated -- have you seen in patients who
21 developed a neurogenic bladder as a result of that
22 impact?

23 A. More often than not motor vehicle
24 accidents.

25 Q. And so your opinion in this case, I

1 believe, is that Mr. Raymond's reports of being
2 repeatedly punched in the head and neck would not
3 rise to the level of forceful impact to the head that
4 would cause a neurogenic bladder to develop; is that
5 correct?

6 A. That is my opinion, yes.

7 Q. And essentially your view is that
8 somebody being punched in the head isn't enough force
9 to cause the body to develop neurogenic bladder? Am
10 I understanding that correctly?

11 A. Well, if that were the case, I would
12 have seen a lot more boxers with neurogenic bladders
13 over the years and I've never seen one.

14 Q. Okay. So just so the record is clear,
15 that is your view, that being punched in the head
16 wouldn't cause neurogenic bladder?

17 A. Correct. Yes.

18 Q. And that opinion is based on your years
19 in private practice and the patients that you've
20 seen; is that correct?

21 A. And the basis of the medical record
22 that I read, all of it.

23 Q. And what in the medical record that you
24 read supports your view that it was -- being punched
25 in the head wouldn't cause somebody to develop

1 neurogenic bladder?

2 A. The absence of any associated injuries
3 or paralysis or documentation of a significant head
4 injury. I did not see that at all.

5 Q. So I guess let's separate the medical
6 literature and the medical record in this case. So
7 is there anything that you're aware of in the medical
8 literature which supports your view that punches to
9 the head could never cause somebody to develop
10 neurogenic bladder?

11 MR. MACKEY: Objection to form.

12 A. Now you're pluralizing it. You said
13 punched to the head before now you are saying
14 punches. Certainly you could have multiple injuries
15 to the head based on punches that could cause
16 underlying brain damage. That is a given. I did not
17 see evidence of that in this case.

18 Q. Okay. So Mr. Raymond's allegation is
19 that he was repeatedly punched in the head and that
20 that's the mechanism of injury. Would repeated
21 punches to the head in your view be a sufficient
22 force to cause somebody to develop neurogenic
23 bladder?

24 A. No. I can't say that, no.

25 Q. So, you're making a distinction it

1 sounds like between -- and can you explain why that's
2 your opinion? Because I thought you said before that
3 multiple impacts to the head could cause neurogenic
4 bladder. Are you distinguishing between punches and
5 some other type of force?

6 A. I'm drawing a distinction between the
7 evidence that is in this case. And there is no
8 evidence based on the photographs that we saw after
9 Mr. Raymond was assaulted as he alleged of
10 significant head trauma.

11 Q. Right. So what -- my question is a
12 little different, Dr. Valvo. My question is, are you
13 aware of anything in the medical literature that
14 supports the view -- well, withdrawn.

15 So, just to go back to Mr. Raymond.
16 Mr. Raymond, as I said, he claims that he was punched
17 in the head and the neck multiple times with a fist.
18 Is that force in your view sufficient to cause
19 neurogenic bladder?

20 A. In this case, no, I cannot say that it
21 is.

22 Q. Okay. But what about in another case?
23 If somebody came to you and said I just got punched
24 in the head ten times and now I have neurogenic
25 bladder, is that something you think is possible?

1 MR. MACKEY: Objection.

2 A. Anything is possible, counselor, but
3 realistically, I do not see that.

4 Q. Okay. So have you ever treated
5 somebody who fell off a ladder who had a work-related
6 injury where they bumped or hit their head and they
7 developed neurogenic bladder?

8 A. No.

9 Q. What's the line in your mind between
10 you're ability as a urologist to analyze the kind of
11 forced mechanics that would be required to cause
12 neurogenic bladder?

13 MR. MACKEY: Object to form.

14 A. Because every person I see we have to
15 try to develop a mechanism of injury, what has caused
16 this to happen and what is the mechanism whereby
17 which this person has an objective problem. And I
18 have not been illuminated by any of the experts to
19 date as to what that mechanism of injury is.

20 Q. So what did cause Mr. Raymond to
21 develop the neurogenic bladder?

22 A. I do not know.

23 Q. And so in your practice have you had
24 other patients where they developed a neurogenic
25 bladder and it was severe enough that they required

1 bladder augmentation surgery but you were never able
2 to determine the precipitating event that caused the
3 neurogenic bladder to develop?

4 A. Yes.

5 Q. And how common is that?

6 A. It's quite common. We see patients of
7 all different ages and causes, and more often than
8 not it's an elderly patient that may be on multiple
9 medications or having some obstructive uropathology.

10 Q. Have you ever seen a 32-year-old
11 patient or patient in their late twenties or early
12 30s spontaneously develop neurogenic bladder that you
13 couldn't identify any causation for?

14 MR. MACKEY: Object to form.

15 A. Yes.

16 Q. You have seen that?

17 A. Yes.

18 Q. And is that common?

19 A. No.

20 Q. It's uncommon, correct?

21 A. Yes.

22 Q. So, what about the picture of
23 Mr. Raymond that you mentioned did you find to be
24 insufficient to show that he had sustained an injury
25 substantial enough to cause neurogenic bladder?

1 A. Could you repeat that question, please?

2 Q. Sure. I believe you mentioned that you
3 saw some photographs of Mr. Raymond that were taken
4 after he was reported being assaulted; is that
5 correct?

6 A. Yes.

7 Q. And you said that looking at those
8 photographs was part of the reason that you felt that
9 the force that had been applied to his head wasn't
10 sufficient to cause neurogenic bladder. Did I
11 understand your testimony?

12 A. That's correct, yes.

13 Q. And so my question was, what about
14 those photographs that you saw made you conclude that
15 the incident with the litigation had been
16 insufficient to trigger neurogenic bladder?

17 A. For one, he appeared to be steady at
18 gait. Number two, he had some minor abrasions on
19 the, I believe it was the left orbit, some scratching
20 on his upper torso. As I said, he was standing
21 erect, holding up a sign and I believe a little bit
22 of a smile. So it did not appear to be obtunded in
23 any way.

24 Q. I'm sorry, what was the word you used?

25 A. Obtunded.

1 Q. What does that mean?

2 A. Down on the ground writhing in pain,
3 inability to move extremities.

4 Q. Okay. Have you ever worked on a case
5 involving people who were injured in a prison before?

6 A. Not to my recollection.

7 MR. MACKEY: Katie, with that question
8 maybe just to clarify, has he ever worked as an
9 expert in the case or has he ever had any patients
10 that were injured in a prison? I don't know if Dr.
11 Valvo or even if you're able to clarify that.

12 Q. Sure, Dr. Valvo your counsel made a
13 good point. Have you ever served as an expert in a
14 case where somebody who was injured in a prison?

15 A. No.

16 Q. And have you treated people in your
17 practice who were injured in a prison?

18 A. Not to my recollection, no.

19 Q. One moment, Dr. Valvo. Just give me
20 one second.

21 Okay. So, for a young person like
22 Mr. Raymond who at the time this happened was 28
23 years old who develops neurogenic bladder in this
24 sequence of events, can you explain at all how you
25 approach understanding why the neurogenic bladder has

1 come about in this apparently spontaneous way?

2 MR. MACKEY: Objection to form.

3 A. Well, a good history and physical ought
4 to be able to discern a most likely cause, may not
5 prove it unequivocally, but it may help understand
6 what caused it.

7 Q. And do you have a view about what the
8 most likely cause is in this case even if you don't
9 have a view of certainty or definitiveness?

10 MR. MACKEY: I'll object to form.

11 A. Well, I think if we go to a medical
12 history report where Mr. Raymond was being evaluated
13 for seizures -- and this was at the Upstate Medical
14 Center -- in the end, I believe it was July 30, 2017,
15 where in the medical report Mr. Raymond admitted to
16 using illicit drugs, including marijuana. And so
17 that might be an etiology as to what might have been
18 going on.

19 Q. So, the idea is that the neurogenic
20 bladder developed subsequent to or because of his use
21 of illicit drugs? Is that -- am I understanding
22 that?

23 A. That is a cause that was listed in a
24 previous discussion as one of several options. Of
25 course, if that were the case, one would want to

1 counsel the patient on discontinuing that habit.

2 Q. Have you seen any information in the
3 record that suggests that Mr. Raymond was using
4 illicit drugs when he was in prison in 2016?

5 A. That -- I'm pointing to that history
6 and physical that was obtained at Upstate Medical and
7 that was an admission by Mr. Raymond to the
8 physician.

9 Q. Sure. And assuming the correctness of
10 that and that Mr. Raymond did have a history of drug
11 use dating back prior to 2016 for several years,
12 would it be typical to see a several-year delay
13 following somebody's use of drugs to their
14 development of the neurogenic bladder?

15 A. The sentence reads "is using illicit
16 drugs" not used.

17 Q. Are you aware of any medical literature
18 or treatises or expert sources that would discuss the
19 development of a neurogenic bladder as a result of
20 illegal substance abuse?

21 A. Well, there are several. Medications
22 play a very big part in our control of urinary -- of
23 voiding symptoms. And you name the drug and you can
24 come up with an act on the nerve system and in fact
25 can cause with chronic use neurogenic type bladder.

1 Q. And is marijuana one of those drugs?

2 A. Marijuana is one of several.

3 Q. I see. So is it your most likely cause
4 here, you know, as a doctor with the years of
5 experience that you do have, is that Mr. Raymond
6 developed his neurogenic bladder as a result taking
7 marijuana?

8 MR. MACKEY: Object to form.

9 A. That is a cause, just as the others. I
10 can't tell you for certain.

11 Q. Sure. Right. We're trying to look for
12 the most likely cause for this illness, obviously.
13 And you listed in your report, you listed -- well,
14 let's go through it.

15 So Mr. Raymond did not have any
16 evidence that he suffered a stroke, correct?

17 A. That's correct.

18 Q. And he did not -- he does not have
19 Parkinson's disease; is that correct?

20 A. As far as I know, no.

21 Q. And he doesn't have multiple sclerosis,
22 correct?

23 A. Correct.

24 Q. And he -- there is no evidence in the
25 record that you reviewed that he has a spinal cord

1 injury; is that correct?

2 A. That's correct.

3 Q. He didn't undergo spinal surgery,
4 correct?

5 A. Correct.

6 Q. He doesn't have a central nervous
7 system tumor that's in the record that we know of,
8 correct?

9 A. Correct.

10 Q. I'm going to set aside trauma because
11 we've already talked about that and we have a
12 disagreement on that one.

13 And so you write medications along with
14 alcohol and drug abuse. So is that in your view the
15 most likely explanations out of the ones you offered
16 for Mr. Raymond's neurogenic bladder?

17 MR. MACKEY: Object to form.

18 A. I think by process of elimination, that
19 is a leading candidate.

20 Q. Okay. And with respect to trauma, you
21 said forceful impact to the cranium or multiple blows
22 or multiple -- I don't want to say the wrong thing --
23 multiple impact? I'm not sure if that's what your
24 words were, but that's another cause of neurogenic
25 bladder but you ruled that out here because you don't

1 think the force was sufficient, correct?

2 A. That is correct. And evidence for that
3 is an electroencephalogram obtained on 7/21/16.

4 Q. And what does that -- go ahead, please.

5 A. That is a normal EEG. Had there been
6 significant brain trauma, that would invariably have
7 caused an abnormality in the EEG report.

8 Q. Would you agree that people who suffer
9 TBIs often have normal EEGs?

10 A. No, not that fresh. This was just a
11 week after.

12 Q. A week after what?

13 A. The alleged incident.

14 Q. What's the date of the EEG you're
15 referencing?

16 A. I'm sorry, you're correct. I'm sorry.
17 I misspoke. That is in July 21st. The injury took
18 place in September.

19 Q. Okay. So that's 10 months later,
20 right?

21 A. Yeah.

22 Q. So is it possible -- first of all, let
23 me ask you this Dr. Valvo: The issues we're talking
24 about regarding injuries to the brain would seem to
25 me as a layperson to be more in the expertise of a

1 neurologist. Would you agree with that?

2 A. No.

3 Q. So the symptoms of a TBI, how soon they
4 would show up on a brain scan or an EEG, that in your
5 view is not the province of an expert neurologist as
6 opposed to an expert urologist?

7 A. We don't have any objective evidence.

8 Q. Right. I'm saying the area of
9 expertise in general where one studies the cause of
10 TBI, the evidence on brain scans, is that something
11 that is within the province of expertise of a
12 neurologist or a urologist?

13 A. I think probably a neurologist would be
14 appropriate to answer that.

15 Q. So your view that about the possible
16 emergence of symptoms of a TBI and when they would be
17 reflected, that's really something that a neurologist
18 is best positioned to opine on, would you agree?

19 A. That would be an appropriate opinion,
20 yes.

21 Q. Okay. Now, in your view if somebody
22 has a neurogenic bladder that's caused by the abuse
23 of alcohol and drugs, when does it usually develop in
24 relationship to the use of those substances? Is it
25 at the same time? Is it later? How would you

1 characterize that?

2 A. Highly variable depending upon the
3 quantity, the drug that's ingested. It can happen
4 within an evening of an alcohol bingeing or it can
5 happen over a chronic time period.

6 Q. So somebody could binge on alcohol to
7 such a degree in one evening that they would develop
8 a neurogenic bladder that might end up requiring a
9 bladder augmentation surgery; is that your belief?

10 A. No, I didn't say requiring surgery.

11 Q. Okay.

12 A. He could develop a neurogenic bladder.

13 Q. Okay. So I guess in this case like for
14 the degree of severity of this neurogenic bladder
15 that ended up requiring this bladder augmentation
16 surgery, what's the duration of the substance abuse
17 that you would expect to see for that to result?

18 A. That can happen over months or years.

19 Q. Okay. How does your analysis in this
20 case of the fact that you believe that being struck
21 in the head several times or repeatedly with a fist
22 was insufficient force to cause the neurogenic
23 bladder, how is that impacted by the fact that
24 Mr. Raymond had a prior history of TBI and epileptic
25 seizures?

1 A. It is not. We have no underlying
2 organic pathology of his brain. There may be some
3 electrophysiological issues with seizure activity,
4 but there is no demonstrable objective finding that
5 would determine either from CAT scan or MRI to show
6 any underlying brain disease. The structures that
7 control voiding are in the deep part of the brain
8 stem and are cushioned from blows such as he got
9 from -- with normal brain matter and a very hard
10 skull.

11 Q. Is this -- is what you just testified
12 to, is that within your area of expertise as a
13 urologist or is that more of the area of expertise of
14 a neurologist?

15 A. When I look back at neurogenic bladder
16 to try to come up with a cause, I think I can make a
17 weighted decision on that.

18 Q. Fair enough. And so with respect to
19 somebody who is neurologically compromised and has a
20 prior history of TBI and has a prior history of
21 seizure, how does that impact your analysis about
22 what the level of force to the brain would be to
23 cause somebody to develop neurogenic bladder sequela?

24 A. Well, I don't think it's additive or
25 cumulative. I think an injury is such that it can

1 happen or not.

2 Q. Okay. Are you familiar with the fact
3 that people who suffer from a history of traumatic
4 brain injury are more vulnerable to subsequent
5 traumatic brain injury?

6 A. Well, do we have good evidence for that
7 here? Is it well-documented?

8 Q. I'm not asking you about this case.
9 I'm asking you in general. Are you aware of the fact
10 that if somebody has a prior history of traumatic
11 brain injury, it makes them more vulnerable to
12 suffering additional traumatic brain injury?

13 A. Yes.

14 Q. That's a well-recognized medical
15 principle, right?

16 A. Yes.

17 Q. And are you aware that Mr. Raymond does
18 have a documented history of TBI from a work-related
19 injury in 2014?

20 A. I'm unsure of the documentation.

21 Q. So, in your view that the substance
22 abuse explanation is the most likely one here for
23 Mr. Raymond's neurogenic bladder, did any of the
24 records that you reviewed support that assessment?

25 MR. MACKEY: I'll object.

1 Mischaracterizes previous testimony.

2 Go ahead.

3 MS. ROSENFELD: Well, that's important,
4 so we should get it correct.

5 Q. Am I correct that using the process of
6 elimination that we just discussed in your -- of the
7 possible causes in your report, that it's your view
8 that the substance abuse explanation for the cause of
9 this neurogenic bladder is the most likely
10 explanation of the available ones?

11 MR. MACKEY: Object to form.

12 THE WITNESS: May I answer?

13 MR. MACKEY: Yes.

14 Q. Yes.

15 A. Yes, and we have to simply look at his
16 medical history form to document that.

17 Q. And so then just going back to the
18 question I asked, is there anywhere that you saw in
19 the records that you reviewed where any other doctors
20 endorsed the view that the substance abuse that you
21 noted, the marijuana use, was the cause of the
22 neurogenic bladder?

23 A. No, but that was by Mr. Raymond's
24 admission. He said he uses it.

25 Q. I understand. Accepting that

1 Mr. Raymond -- that it's reported that he said he
2 used marijuana, I'm asking did you see in any of the
3 records that you reviewed another physician reached
4 the conclusion that the neurogenic bladder had been
5 caused by substance abuse?

6 A. No.

7 Q. You're the only doctor that has that
8 view that you've reviewed of the records before us?

9 A. That would be the case, yes.

10 Q. Okay.

11 MS. ROSENFELD: Can we just take a
12 five-minute break, please?

13 MR. MACKEY: Sure.

14 MS. ROSENFELD: Thank you. Thank you,
15 Dr. Valvo.

16 (Recess taken.)

17 BY MS. ROSENFELD:

18 Q. Dr. Valvo, I just want to clarify that
19 with respect to your opinion about the causation of
20 the neurogenic bladder by substance abuse as a likely
21 or the likely explanation, are you talking about this
22 is based on the report of active marijuana use in
23 July 2017; is that correct?

24 A. The report indicates using illicit
25 drugs including marijuana. So I have no reason to

1 believe it's confined to marijuana.

2 Q. Okay. Any other reference or
3 information about substance abuse that causes you to
4 form this opinion in addition to that July 2019
5 record that you've pointed to?

6 A. No.

7 MR. MACKEY: Katie, I think you said
8 2019. I think you mean --

9 MS. ROSENFELD: I'm sorry.

10 Q. Other than the July 2017 record that
11 you pointed to from Upstate?

12 A. No.

13 Q. Okay. So, we're going to turn to the
14 section of your report which is at the end of the
15 second paragraph on page 2 where you write "What I
16 mean to say is that light trauma to the head should
17 not result in neurogenic bladder."

18 What do you mean that it should not
19 result in neurogenic bladder? Does that mean it
20 cannot result in neurogenic bladder or that it's not
21 typical that it would?

22 A. Not typical.

23 Q. So, is it your opinion that while it's
24 not typical that light trauma as you define it would
25 result in neurogenic bladder, you can't rule it out

1 as a cause of neurogenic bladder?

2 A. I think you can and I would say, once
3 again, boxers do not demonstrate light trauma. And
4 you would expect if this was a significant repeatable
5 exercise, they would all have neurogenic bladder.
6 And I've never seen one, so I cannot say in this case
7 that the trauma was sufficient enough to induce a
8 brain injury that resulted in neurogenic bladder.
9 That's basically what I'm saying.

10 Q. I understand your opinion. I'm just
11 focused on this language in your report about "light
12 trauma should not result in neurogenic bladder". And
13 so really what you mean here is that light trauma
14 cannot result in neurogenic bladder; is that fair to
15 say?

16 A. Yes, I would say that.

17 Q. Okay. I just want to look at the
18 pictures that you referenced.

19 MS. ROSENFELD: I'm going to show these
20 pictures and I'm going to mark them. And, Pat, I'll
21 circulate the marked copies of these afterwards for
22 clarity. But I'm going to mark as Valvo Exhibit 3
23 these documents that are Bates stamped 1540 to 1544.

24 (Valvo Exhibit 3, documents, Bates
25 stamped 001540 to 001544, were deemed marked

1 for identification.)

2 MR. MACKEY: You're putting it up on
3 the screen, Katie?

4 MS. ROSENFELD: Yeah. Yeah. Exactly.

5 BY MS. ROSENFELD:

6 Q. Dr. Valvo, can you see the photograph
7 that's in front of you?

8 A. Yes, I can.

9 Q. Okay. So this is a photograph taken of
10 Mr. Raymond at 5:15 p.m. on 9/14/2016 and at a page
11 marked -- Bates stamped 1540.

12 So is this one of the photos that
13 you're referencing that you reviewed?

14 A. Yes.

15 Q. Okay. And you reviewed all of these
16 photos that we're looking at?

17 A. Yes.

18 Q. Okay. And this is your -- the photo to
19 now on page 1543, this is the image where I believe
20 you described the left -- I'm not sure what word you
21 used, some injury to the left side of the face?

22 A. Orbit. It's an orbital abrasion.

23 Q. Okay. And is that --

24 A. Yes.

25 Q. The orbital abrasion is kind of to --

1 in the photograph to the left of the ear?

2 A. Yes.

3 Q. And does Mr. Raymond's eye appear to be
4 shut, his left eye?

5 A. It does, yes.

6 Q. Okay. Now, what's your understanding
7 of what time the incident, underlying incident
8 occurred?

9 A. I can't tell you for certain. It was,
10 I believe, sometime earlier in the afternoon.

11 Q. Okay.

12 A. Earlier afternoon or morning, I can't
13 recall.

14 Q. Okay. So this is -- this photograph
15 obviously was taken after the incident. So are you
16 aware that Mr. Raymond testified that after he was
17 assaulted, the officers cleaned his face before
18 taking his photograph?

19 A. I believe I saw that in his testimony,
20 yes.

21 Q. And which of these photos -- and I'll
22 go slowly -- which of these photos is the one where
23 you think that Mr. Raymond is smiling?

24 A. I did not know Mr. Raymond before. He
25 looks like he's got kind of a general smirk, if you

1 will. It appeared to me that he was. That may be
2 his normal countenance. That's what it appears to.
3 But you can clearly see he's standing erect, his
4 posture looks perfect.

5 Q. So which picture is it that you think
6 that he's smirking in?

7 A. This one here with the swollen eye.
8 But, again, that may just be his normal facial
9 countenance. I've never seen him before. I don't
10 know what he looked like before or after, but to me
11 it looked like there is a small smirk on his face,
12 that's all. That's my impression.

13 Q. Meaning that you think in this photo he
14 looks like something is funny? I just want to
15 understand your testimony.

16 A. That he's smiling. That he's smiling.

17 Q. Okay. You understand that --
18 withdrawn.

19 Okay. So you interpret these photos as
20 showing Mr. Raymond to be slightly smiling; is that
21 correct?

22 A. That's my impression. That's what I
23 see.

24 Q. Okay. Did that factor into your
25 opinion about the incident here?

1 A. None whatsoever.

2 Q. So I just want to direct your attention
3 now to your report at page 2, to the last sentence of
4 the large second paragraph, please.

5 A. Yes.

6 Q. You concluded "Review of the medical
7 records from 9/13/16 and 9/14/16 indicated that
8 Mr. Raymond did in fact experience grand mal seizures
9 on both these days. The seizures were followed by
10 aggressive agitation, confusion with combative
11 behavior, undoubtedly had to be restrained by the
12 guards for his own self-protection, but I do not
13 believe there was significant brain injury caused
14 from an external force that caused this individual to
15 develop a neurogenic bladder."

16 Did I read that correctly?

17 A. Yes, you did.

18 Q. Okay. So your view is that whatever --
19 that the seizures he had on 9/13 and 9/14 did not
20 cause him to develop neurogenic bladder; is that fair
21 to say?

22 A. Yes, I believe so.

23 Q. And so, for example, the seizure he had
24 on the 13th, you know, he reported after that he had
25 tenderness to the neck, do you think that that was a

1 symptom at that point that he had neurogenic bladder?

2 A. No.

3 Q. Okay. You talk in your report at
4 several different points that neurogenic bladder is a
5 condition that develops over a length of time and is
6 not an acute event. What is the length of time that
7 you believe that neurogenic bladder generally
8 develops over?

9 A. Well, it can develop in an acute event.
10 It can develop either, really. I've seen patients
11 who are insignificant have significant spinal injury,
12 i.e. motor vehicle accident, and have a neurogenic
13 bladder the next day. And many times it's more of a
14 chronic causation.

15 Q. So, I'm looking at paragraph 2 of your
16 report. I think this appears actually a couple times
17 but in paragraph 2 of your report. You say "Absence:
18 I'm reading in the middle of the second large
19 paragraph, "Absence of sudden and severe trauma to
20 the head, neck, spinal cord, a neurogenic bladder is
21 a condition that develops over a length of time and
22 is not an acute event."

23 So, I guess just to make sure I'm
24 understanding, so you're saying that if you have a
25 sudden and severe trauma to the head, neck, spinal

1 cord, one could develop neurogenic bladder as an
2 acute event with your example being, for example, a
3 motor vehicle accident?

4 A. In my experience, that is the case.

5 Q. Okay. And then I think I'm
6 understanding this to say that neurogenic bladder can
7 also be a condition that develops over a length of
8 time in other manifestations; is that correct?

9 A. That is correct.

10 Q. Okay. And then it says "Once again,
11 generally associated with a head injury that is of
12 significant nature to affect other neurologic
13 structures and not a light hick" -- H-I-C-K -- "to
14 the head." Is that just a typo and it should say
15 hit, H-I-T?

16 A. Yes.

17 Q. Okay. When you say "other neurologic
18 structures," what do you mean?

19 A. Remember, the control for voiding
20 function is at the brain stem located deep in the
21 base of the skull. I do not know of any mechanism,
22 external force that can solicit out just the brain
23 stem and leave the rest of the brain matter intact.
24 So there has to be a concomitant injury with other
25 brain functions manifested such as paralysis,

1 inability to speak, some other neurologic symptoms
2 other than a discrete neurogenic bladder.

3 Q. So and this is at paragraph 1 you're
4 listing that in order to have a head injury
5 sufficient to cause neurogenic bladder, you would
6 also in addition to the fact of force to the head,
7 you would want to see gait disturbance, difficulty
8 with voluntary movements of the lower extremities,
9 memory loss, aphasia and assorted other injuries
10 depending on the full extent of the trauma; is that
11 what you're referring to?

12 A. Some or all, yeah.

13 Q. What is aphagia, A-P-H-A-G-I-A?

14 A. It's the inability to provide -- to
15 talk, to give -- make a sentence, have a thought
16 process and communicated verbally.

17 Q. And you reviewed Dr. Leitch's report
18 and Dr. Leitch concluded, as you know, that
19 Mr. Raymond displayed other symptoms of neurologic
20 deficits including confusion, memory problems, sleep
21 problems, increased seizure activity, other things of
22 that nature. Would those in your mind be other
23 neurologic impairments that would go along with the
24 neurogenic bladder finding?

25 A. Not necessarily. And I believe some of

1 those existed prior to the incident.

2 Q. Right. And so, for example, would you
3 see increased seizure activity as a sign of a
4 neurological impairment following a TBI that's
5 consistent with neurogenic bladder?

6 A. Again, independent of neurogenic
7 bladder but more consistent with a head injury.

8 Q. Did you have a chance to read Dr.
9 Valvo's report in this case? I'm sorry, Dr. Vapnek's
10 report in this case? I believe you said that was
11 sort of No. 20 on your list.

12 A. Yes, I did.

13 Q. Okay. Do you have Dr. Vapnek's report
14 available to you, Dr. Valvo?

15 A. Yes, I do.

16 Q. Okay. Great. So let's mark that it as
17 Exhibit 4, Valvo 4, Dr. Vapnek's report.

18 (Valvo Exhibit 4, report of Jonathan M.
19 Vapnek, M.D. dated December 15, 2021, was
20 deemed marked for identification.)

21 Q. So if you can please turn, Dr. Valvo,
22 to page 3.

23 A. Yes.

24 Q. So, you'll see it says "Defense urology
25 expert". Do you see that on the bottom paragraph?

1 A. Yes. Yes. Yes.

2 Q. If you wouldn't mind just reading to
3 yourself just to save our court reporter that
4 paragraph down to the end of the report again and
5 then just let me know when you've had a chance to do
6 that, please?

7 A. Yeah, I have.

8 Q. Okay. So what would you say are your
9 primary areas of disagreement with Dr. Vapnek's
10 conclusions after reviewing this section of his
11 report?

12 A. Well, I think he believes that this
13 condition can arise spontaneously, de novo, if you
14 will. I do not believe -- I do not agree with him
15 that there was sufficient injury to the brain to
16 cause a neurogenic bladder. I'm of the opinion that
17 if there had been significant brain injury, this
18 condition would have manifested itself much closer to
19 the alleged incident than four months later. That's
20 where we disagree.

21 Q. Can you just point to me to where he
22 says it can occur spontaneously? I believe you had
23 said that. I'm just not finding it quickly.

24 A. He believes "the severe dysfunction
25 clearly began after the September 14th assault".

1 Q. Okay. And, well, you agree with that,
2 right?

3 A. But it's implied here that it happened
4 right away.

5 Q. Okay. But -- well, I'm not sure where
6 you get that but just to make a clear record, you
7 agree that the voiding dysfunction began after the
8 September 14, 2016 event, correct?

9 A. I agree with that, yes.

10 Q. Okay. And let's go back to the
11 first -- to the first paragraph -- the last paragraph
12 of page 3, please.

13 A. Yes.

14 Q. Do you agree with Dr. Vapnek that
15 "given the complexity of brain function, especially
16 in patients with a prior history of traumatic brain
17 injury that brain lesions can lead to bladder and
18 sphincter dysfunction that led to urinary retention
19 rather than urinary urge incontinence"?

20 A. So the question was, are you asking do
21 I agree or disagree with him?

22 Q. Yes.

23 A. Yes, I agree it could cause issues, no
24 question about it.

25 Q. And do you agree that "a subtle lesion

1 at that level could lead to urinary retention rather
2 than detrusor overactivity with urge incontinence?

3 A. A subtle lesion, yes.

4 Q. Okay. And do you agree that with his
5 statement that "Mr. Raymond developed multiple issues
6 consistent with TBI such as headaches, difficulty
7 with concentration and marked cognitive dysfunction"?

8 A. I do not have a basis for that.

9 Q. Okay.

10 A. Objectively.

11 Q. Okay. Do you agree that "the
12 urodynamic study of November 2017 demonstrated a
13 small capacity bladder without demonstrable detrusor
14 overactivity"?

15 A. Yes.

16 Q. And do you agree that "a non-relaxing
17 external sphincter due to CNS dysfunction can lead to
18 detrusor acontractility and urinary retention"?

19 A. Yes.

20 Q. Okay. And do you agree with his view
21 that "a more subtle brain injury could become
22 clinically apparent over a longer period of time"?

23 A. Yes.

24 Q. And do you agree with his conclusion
25 that given that he was incarcerated, it's more likely

1 that early signs of voiding dysfunction were missed,
2 leading to his presentation at the emergency room in
3 urinary retention four months following the injury?

4 MR. MACKEY: Object to form.

5 A. That's a possibility but I'm unaware of
6 his surroundings.

7 Q. Okay. You're unaware of his
8 surroundings, meaning you're unaware that Mr. Raymond
9 was incarcerated when he was injured?

10 A. No, I know he was incarcerated but I
11 don't know how things work in the jail system.

12 Q. Okay. Okay. And do you agree that you
13 offer no alternative explanation for Mr. Raymond's
14 severe voiding dysfunction that clearly began after
15 the September 14, 2016 assault?

16 MR. MACKEY: Object to form.

17 A. Yes. Yes.

18 Q. Do you agree with that?

19 A. Yep. Yes.

20 Q. And do you agree that Mr. Raymond can
21 no longer void on his own?

22 A. Yes.

23 Q. And do you agree that his damages are
24 permanent?

25 MR. MACKEY: Object to form.

1 A. Yes.

2 Q. And do you agree that he'll need close
3 urologic monitoring for life because of the
4 complications -- substantial complication rate
5 associated with major reconstructive surgery?

6 A. Yes.

7 Q. Okay. And I'm almost done, Dr. Valvo.
8 Thank you. And my last couple of questions are, I
9 just want to really make sure that I understand the
10 basis for your opinion about the most likely cause
11 that you can identify as being a substance abuse
12 triggered neurogenic bladder. That is based on the
13 July 2017 Upstate medical record showing that he
14 admitted using substances, correct?

15 A. Yes.

16 Q. Is there any other evidence in the
17 record that you're thinking of when you come to that
18 conclusion that it's the most likely explanation for
19 the neurogenic bladder?

20 MR. MACKEY: I'll object. Asked and
21 answered.

22 A. That and the absence of any significant
23 trauma.

24 Q. Okay. And the opinion that he didn't
25 suffer significant trauma is based on the photographs

1 that we reviewed which we talked about and what else
2 is it based on?

3 A. The lack of any objectivity, i.e.
4 imaging scans or a neurologic evaluation after the
5 alleged incident.

6 Q. And the neurologic evaluation that Dr.
7 Leitch conducted you believe is insufficient because
8 it's so far away in time from the event?

9 A. Yes.

10 Q. Do you think that her evaluation is
11 unreliable in any other way or is it just your
12 opinion that it's just remote in time?

13 A. It's my opinion that it's too far from
14 the original incident, that it's too remote.

15 Q. Okay. But otherwise you don't have any
16 issues with the neurologic exam that she conducted in
17 terms of its thoroughness or what she did?

18 A. I do not.

19 Q. Okay. So, the photographs, the lack of
20 imaging, and the lack of a close neurologic exam,
21 those are the main evidence that you say support your
22 view that there was insufficient trauma to cause the
23 neurogenic bladder; is that correct?

24 A. Yes.

25 Q. Anything else that you didn't tell me

1 about that you relied on to make that opinion?

2 A. No.

3 Q. Okay. We can just sit here in silence
4 for one minute. I won't even go off camera, but I
5 just want to look at my notes. Okay?

6 A. Sure.

7 (Pause in the proceedings.)

8 MS. ROSENFELD: Okay. I don't have any
9 more questions now, Dr. Valvo. Thank you very much
10 for your time.

11 THE WITNESS: Have a nice day. Thank
12 you.

13 THE COURT REPORTER: Mr. Mackey, do you
14 wish to purchase a copy of this transcript?

15 MR. MACKEY: I think Katie is --

16 MS. ROSENFELD: We're providing a copy
17 of the transcript to them.

18 (Witness excused.)

19 (Time noted: 10:56 a.m.)

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1 C E R T I F I C A T E .

2 STATE OF NEW YORK)

3 :ss.

4 COUNTY OF NEW YORK)

5

6 I, CELESTE A. GALBO, a Registered
7 Professional Reporter, Register Merit Reporter and
8 Notary Public of the State of New York and State of
9 New Jersey, do hereby certify:

10 THAT JOHN VALVO, M.D., the witness
11 whose deposition is hereinbefore set forth, was
12 remotely duly sworn by me and that such deposition is
13 a true record of the testimony given by the witness.

14 I further certify that I am not related
15 to any of the parties to this action by blood or
16 marriage, and that I am in no way interested in the
17 outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set
19 my hand this 18th day of March 2022.

20

21

22

23 _____
CELESTE A. GALBO, RPR, RMR

24 DEPOSITION ERRATA SHEET

25 Case Caption:

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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

JOHN VALVO, M.D.

Subscribed and sworn to on the ____ day of _____,
20__ before me.

Notary Public,
In and for the State of New York

1 DEPOSITION ERRATA SHEET

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